U.S. Department of Justice

Immigration and Naturalization Service

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*OFFICE OF ADMINISTRATIVE APPEALS*
*425 Eye Street N.W.*
*ULLB, 3rd Floor*
*Washington, D.C. 20536*

[redacted]

FILE: [redacted] Office: Philadelphia Date: MAY 17 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under § 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9)(A)(iii), Filed in Conjunction with Application for Waiver of Grounds of Inadmissibility under § 212(h) of the Act, 8 U.S.C. 1182(h)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.



FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

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**DISCUSSION:** The applications were denied by the District Director, Philadelphia, Pennsylvania, and the matter is now before the Associate Commissioner for Examinations on appeal. The Application for Permission to Reapply for Admission (Form I-212) appeal will be dismissed and the Waiver of Grounds of Inadmissibility (Form I-601) appeal will be rejected.

The applicant is a native and citizen of Colombia who was lawfully admitted for permanent residence on March 30, 1978. The applicant was convicted of several crimes involving moral turpitude following his admission. Therefore, he is inadmissible under § 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I) for having been convicted of a crime involving moral turpitude. The record also reflects that the applicant was removed from the United States on March 25, 1993 and on September 20, 1995. Therefore, he is inadmissible under § 212(a)(9)(A)(ii) of the Act, for having been previously removed from the United States. The applicant was present in the United States again without a lawful admission or parole following both removals and without permission to reapply for admission in violation of § 276 of the Act (a felony).

The district director denied the Form I-212 application as a matter of discretion.

On appeal the applicant states that he has strong family ties in the United States and refers to his six children, his mother, his sister and his fiancèe.

The record reflects the following regarding the applicant:

> On March 27, 1978, the applicant pleaded guilty to the reduced charge of Petit Larceny in New York and received a conditional discharge.
>
> On June 25, 1980, the applicant pleaded guilty to the charge of Grand Larceny 3 in New York and he was placed on 5 years probation.
>
> On May 8, 1985, the applicant was convicted of three counts of Larceny in Florida and he was jailed for 4 months and placed on probation for 10 years.
>
> On March 9, 1987, the applicant was convicted of for Grand Larceny and sentenced to 1 year confinement but served only part of that time.
>
> On May 13, 1991, he was convicted of Grand Theft Third, Fraud and Swindling and was sentenced to 30 days imprisonment. He was deported from the United States on March 25, 1993.
>
> In October 1993 the applicant returned to the United States unlawfully and without permission to reapply for admission.

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On December 17, 1993, he was convicted of Organized Fraud and Conspiracy Fraud.

On June 3, 1994, he was convicted of a violation of Illegal Reentry after Deportation or Removal and was sentenced to 21 months imprisonment and 2 years supervised release.

On September 20, 1995, he was removed from the United States.

The applicant returned to the United States again unlawfully prior to August 11, 1997 and without permission to reapply for admission.

On May 20, 1998, he was convicted of Illegal Reentry after Deportation or Removal and was sentenced to 37 months imprisonment.

Section 212(a)(9) ALIENS PREVIOUSLY REMOVED

(A) CERTAIN ALIENS PREVIOUSLY REMOVED.-

(ii) OTHER ALIENS.-Any alien not described in clause (i) who-

(I) has been ordered removed under § 240 of the Act or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) EXCEPTION.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the alien's reapplying for admission.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

[redacted]

(i) IN GENERAL.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, is inadmissible.

Section 212(h) WAIVER OF SUBSECTION (a)(2)(A)(i)(I), (II), (B), (D), AND (E).-The Attorney General may, in his discretion, waive application of subparagraph (A)(i)(I),...if-

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i)...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or for adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7

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years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

Section 101(a)(43) of the Act, 8 U.S.C. 1101(a)(43), states, in pertinent part, that the term "aggravated felony" means-(G) a theft offense.... The terms "theft" and "larceny" are synonymous.

The applicant was lawfully admitted to the United States on March 30, 1978 and he was convicted of committing aggravated felonies, Grand Larceny (theft), on four separate occasions in 1980, 1985, 1987 and 1991. Therefore, he is ineligible for the above § 212(h) waiver.

In Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Comm. 1964), the Regional Commissioner held that a Form I-212 application for permission to reapply for admission is denied, in the exercise of discretion, to an alien convicted of violating a law which renders the alien mandatorily inadmissible to the United States, and no purpose would be served in granting the application.

The record reflects that the applicant is mandatorily inadmissible to the United States under § 212(a)(2)(A)(i)(I) of the Act for having been convicted of committing an aggravated felony after he was lawfully admitted for permanent residence. No waiver of such ground of inadmissibility is available to the applicant who was a former lawful permanent resident when he committed the aggravated felony. Therefore, the favorable exercise of discretion in this matter is not warranted.

Service instructions at O.I. 212.7 specify that a Form I-212 application will be adjudicated first when an alien requires both permission to reapply for admission and a waiver of grounds of inadmissibility. If the Form I-212 application is denied, then the Form I-601 should be rejected, and the fee refunded.

In discretionary matters, the applicant bears the full burden of proof. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957); Matter of Ducret, 15 I&N Dec. 620 (BIA 1976). Here, that burden has not been met. Accordingly, the Form I-212 appeal will be dismissed and the Form I-601 appeal will be rejected.

**ORDER:** The Form I-212 appeal is dismissed and the Form I-601 appeal is rejected.